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Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALEJANDRA HERNANDEZ,

Plaintiff,

v.

CHASE BANK, USA, N.A.; and DOES 1-20;

Defendants.

Case No.: 09CV0629 JLS (LSP)

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE  
RELIEF UNDER;**

**(1) TRUTH IN LENDING ACT;  
(2) FOREIGN LANGUAGE  
CONTRACT ACT;  
(3) UNFAIR COMPETITION LAW;  
(4) QUIET TITLE ACTION**

**DEMAND FOR JURY**

Plaintiff ALEJANDRA HERNANDEZ complains of Defendants, CHASE BANK, USA, N.A.; and DOES 1-20 (hereinafter referred to as “Defendants”) and allege:

**I. PRELIMINARY STATEMENT**

1. This is an action for permanent injunctive relief, and damages for predatory and discriminatory lending in the provision of financial mortgage lending assistance. The plaintiff seeks rescission and/or reformation of the loan transactions for which there is a security interest in her home and seeks her remedies as outlined below.

2.

## II. RELEVANT FACTS

3. The plaintiff, Alejandra Hernandez, is a predominantly Spanish speaker and generally does not read or write in English. At all relevant times alleged herein, Ms. Hernandez was over the age of 18 and a resident of San Diego County. In October of 2007, Ms. Hernandez, a caterer, purchased a home located at 301 E. 6th Street, Calexico, California. The purchase price was \$350,000 and it was intended to be a real step up for Ms. Hernandez who had been living in a much smaller home. Said real property, hereinafter "PROPERTY", is the subject of this suit and all claims made herein are based upon the purchase and ownership of said PROPERTY in the name of Ms. Hernandez.

4. Ms. Hernandez negotiated the loan with Defendant Chase Bank through a licensed California Real Estate Broker: Mortgage Made Easy. The terms were discussed and negotiated primarily and entirely in Spanish. Despite the fact that she requested a translation of the terms into Spanish, no translation and no contract terms were provided to Ms. Hernandez in Spanish at any time.

5. Ms. Hernandez, who had an excellent credit score, was informed by Chase that because she already owned a home, this new purchase had to be as an "investment" property. The loan transaction was for 10.499% fixed rate over 30 years, although the going rate for owner-occupied properties was about 6.5%. This was untrue. Standard underwriting practices at the time dictated just the opposite, i.e., that when a property being purchased was superior to the property already owned and the borrower wished to move up, the loan could be made at an owner-occupied rate. Chase disregarded the borrower's stated intention and convinced the borrower to accept a loan that was greatly detrimental to the plaintiff but provided maximum return to Chase based in part, upon false and misleading statements.

6. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the PROPERTY, or their relative responsibilities in causing the violations of law herein complained of, and allege a joint

1 venture and common enterprise by all such Defendants. Plaintiffs are informed and  
2 believe that each of the Defendants herein, including DOES 1 through 20, inclusive, is  
3 responsible in some capacity for the events herein alleged, or is a necessary party for  
4 obtaining appropriate relief. Plaintiffs will seek leave to amend when the true names,  
5 capacities, connections, and responsibilities of the Defendants and DOES 1 through 20,  
6 inclusive, are ascertained.

7       7. At all times relevant hereto, the Defendants, in the ordinary course of its  
8 business, regularly extended or offered to extend consumer credit for which a finance  
9 charge is or may be imposed or which, by written agreement, is payable in more than  
10 four installments.

11       8. Defendants and their agents, officers, employees, and affiliated or  
12 associated parties have engaged in and continue to engage in a pattern of unlawful,  
13 fraudulent or unfair predatory real estate lending practices causing victims of their  
14 actions, including Plaintiff herein, to lose their home through foreclosure.

15       9. The English copy of the Truth in Lending Act Disclosures understated the  
16 annual percentage rate, the finance charge, the amount financed and the total of  
17 payments and providing misleading information.

18       10. Chase Bank, acting through its agents, filed a Declaration of Compliance  
19 pursuant to California Civil Code, Section 2923.5(c), as a necessary first step to  
20 foreclosing on the PROPERTY declaring that Chase had contacted the borrower and  
21 assessed the borrower's financial situation and explored options to avoid foreclosure  
22 (as required by the Civil Code). This declaration is a falsehood.

23  
24                   **I. FIRST CAUSE OF ACTION**  
25                   **TRUTH IN LENDING ACT**

26       11. The allegations contained in all previous paragraphs are realleged and  
27 incorporated herein by reference.

28       12. In October of 2007, Ms. Hernandez consummated a consumer credit

1 transaction (hereinafter “the transaction”) with Defendants or their predecessors in  
 2 interest in which Defendants extended consumer credit was subject to a finance charge  
 3 and which was initially payable to Defendants or their predecessors in interest.

4 13. As part of this consumer credit transaction, the Defendants retained a  
 5 security interest in the PROPERTY, which is Plaintiff’s home.

6 14. The disclosures made pursuant to the Truth in Lending Act violated the  
 7 requirements of Truth in Lending and Regulation Z in the following and other respects:  
 8 it understated the annual percentage rate, the finance charge, the amount financed and  
 9 the total of payments.

10 15. The plaintiff raises these claims defensively under a recoupment theory in  
 11 the face of the Defendants foreclosure proceedings. Plaintiff seeks actual damages,  
 12 statutory damages, attorney’s fees and costs.

13  
 14 **II. SECOND CAUSE OF ACTION**  
 15 **FOREIGN LANGUAGE CONTRACT ACT**  
 16 **[Cal. Civ. § 1632 et al.]**

17 16. The allegations contained in all previous paragraphs are realleged and  
 18 incorporated herein by reference.

19 17. The contract and loan obligations negotiated in this case were for use  
 20 primarily for personal, family or household purposes and subject to the provisions of  
 21 Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the  
 22 Business and Professions Code, or Division 7 (commencing with Section 18000), or  
 23 Division 9 (commencing with Section 22000) of the Financial Code. Although the  
 24 FLCA generally exempts loans secured by real property from its coverage, this loan  
 25 falls within one of the enumerated exceptions: for loans that are negotiated by real  
 26 estate brokers.

27 18. Thus, the loans that are the subject of this lawsuit were subject to the  
 28 requirements of the Foreign Language Contract Act found at California Civil Code §

1 1632 et al.

2 19. Because the contract and loan obligation was negotiated in Spanish, the  
3 plaintiff was entitled to a copy of the loan terms in Spanish. Defendants failed to  
4 provide the plaintiff with a copy of the loan terms in Spanish.

5 20. Pursuant to subdivision (k) of the California Civil Code § 1632,  
6 Defendants must allow the plaintiff to rescind the loan.

7 21. Pursuant to California Civil Code § 1691(b), this complaint serves as a  
8 notice of rescission.

9  
10 **III. THIRD CAUSE OF ACTION**  
11 **UNFAIR COMPETITION LAW**  
12 **[Cal. Bus. & Prof. § 17200 et al]**

13 22. The allegations contained in all previous paragraphs are realleged and  
14 incorporated herein by reference.

15 23. The Defendants violated the Truth in Lending Act, the Perata Mortgage  
16 Relief Act, and the Foreign Language Contract Act as alleged above.

17 24. Defendants' acts and omissions alleged herein are a violation of both  
18 statutory requirements and public policy and, therefore, constitute a violation of  
19 Business and Professions Code sections 17200 et seq.

20 25. By failing to provide the contract terms in Spanish to the plaintiff, the  
21 Defendants took advantage of the language gap to mislead and deceive the plaintiff  
22 about the true cost of her credit and about the terms under which she was financing her  
23 home.

24 26. Because the defendant failed to comply with the Foreign Language  
25 Contract Act and the Truth in Lending Act (and, therefore, the UCL) and give the  
26 plaintiff a translation of the loan terms, with accurate disclosures, she was misled as to  
27 the actual terms she was entering into to her great harm and injury. She entered into a  
28

1 loan transaction that cost her much more than what she was willing to agree to and cost  
2 her a lot more than she could afford.

3 27. The Plaintiff has suffered injury in fact because of these violations.

4 28. Plaintiff seeks restitution and injunctive relief

5  
6 **V. FOURTH CAUSE OF ACTION**  
7 **QUIET TITLE (Cal. Civ. P. § 760.010-764.080)**

8 29. The allegations contained in all previous paragraphs are realleged and  
9 incorporated herein by reference

10 30. The Plaintiff is the owner of the PROPERTY, is currently in possession of  
11 the PROPERTY and is entitled to possession of the PROPERTY.

12 31. The Defendants claim an adverse interest in the PROPERTY owned by the  
13 Plaintiff, but such claims are without right, the Defendants have no right, title, stake,  
14 lien, or interest in the PROPERTY.

15 32. Because the plaintiff has properly exercised her rescission right and  
16 rescinded the loan transaction, the security interest in the PROPERTY has been  
17 terminated, any debt owed by the plaintiff to the Defendants is an unsecured debt and  
18 does not impair title. There is no debt that impairs title to the PROPERTY.

19 33. Plaintiff filed a Notice of Pendency of Action with the San Diego County  
20 Recorder's Office on April 14, 2009.

21 34. Plaintiff seeks a determination of her fee simple title in this action as of the  
22 date that this complaint is filed.

23 35. The legal description of the PROPERTY is as follows:

24 ***LOT 7, BLOCK 1 OF SANTA'S SUBDIVISION OF BLOCK 28 OF THE***  
25 ***TOWNSITE OF CALEXICO, IN THE CITY OF CALEXICO, COUNTY OF***  
26 ***IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 1040, ON***  
27 ***FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO***  
28 ***COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF***



**PROOF OF SERVICE**

HERNANDEZ V. CHASE BANK, USA, N. A.

Case No.: 09CV0629JLSLSP

I, the undersigned, am over the age of eighteen years and am resident of San Diego County, California; I am not a party to the above-entitled action; my business address is 100 East San Marcos Blvd., Suite 400, San Marcos, California, 92069-2088.

On June 4, 2009 I served the following document(s):

**NOTICE OF FILING FIRST AMENDED COMPLAINT IN LIEU OF OPPOSITION  
TO MOTION TO DISMISS  
FIRST AMENDED COMPLAINT**

Addressed to:

Christopher S. Yoo, Esquire

[cyoo@adorno.com](mailto:cyoo@adorno.com)

ADORNO YOSS ALVARADO & SMITH

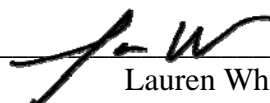
1 MacArthur Place, Suite 200

Santa Ana, CA 92707

- ☐ **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at San Marcos, California.
- ☐ **BY FACSIMILE:** In addition to the service by mail as set forth above, I forwarded a copy of said documents via facsimile to the listed facsimile number.
- ☐ **BY OVERNITE EXPRESS:** I caused such envelope with postage thereon fully prepaid to be placed in the Designated Overnight Express drop box at San Marcos, California.
- ☐ **BY PERSONAL SERVICE:** I caused said documents to be personally served on all listed recipients via Diversified Legal Services.
- ☒ **BY ELECTRONIC MAIL TRANSMISSION:** via the United States District Court, Southern District of California's CM/ECF system. I caused the listed documents to be electronically filed and subsequently emailed to the recipient(s).

Executed on June 4, 2009 from San Marcos, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
Lauren Whitehead